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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,875	06/14/2006	Thomas Behringer	21914.7	6577
24025 7590 11/19/2007 PATENTANWAELTE LICHTI + PARTNER GBR POSTFACH 41 07 60 D-76207 KARLSRUHE, GERMANY			EXAMINER CHIN, PAUL T	
			ART UNIT 3652	PAPER NUMBER
			MAIL DATE 11/19/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/582,875	BEHRINGER, THOMAS	
	Examiner	Art Unit	
	PAUL T. CHIN	3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 5,6 and 8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5,6 and 8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. Applicant's arguments filed August 24, 2007, have been fully considered but they are not persuasive. **THIS ACTION IS MADE FINAL.**

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 5,6, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Linner (6,733,224) (see PTO-892) in view of Kress (6,439,631) (see IDS).

Linner (6,733,224) discloses a tube handling device for inserting tubes into a tube filling machine, for relocating tubes within the tube filling machine or for removing tubes from the tube filling machine, with at least one movable carrier (32,34) having a plurality of tube grippers (41) disposed thereon in at least one gripper row, wherein an adjusting device (fig. 4) is disposed on the carrier, which comprises at least one drive device whose drive motion can be translated by a transfer device (28) into a relative motion of the tube grippers (41) along the gripper row, and the drive device being formed by two pneumatic cylinders (45,46) which are oriented parallel to each other in the longitudinal direction of the gripper row and which act in opposite directions. However, Linner (6,733,224) does not teach scissor action arms which can be pulled apart and pushed together using the drive device. However, Kress (6,439,631) teaches a pantograph or scissor arms to adjust the spacing between the grippers. Accordingly, it would have been obvious to those skilled in the art to provide a well known pantograph on the carrier

(34) of Linner (6,733,224) as taught by Kress (6,439,631) to conveniently adjust the spacing between the grippers.

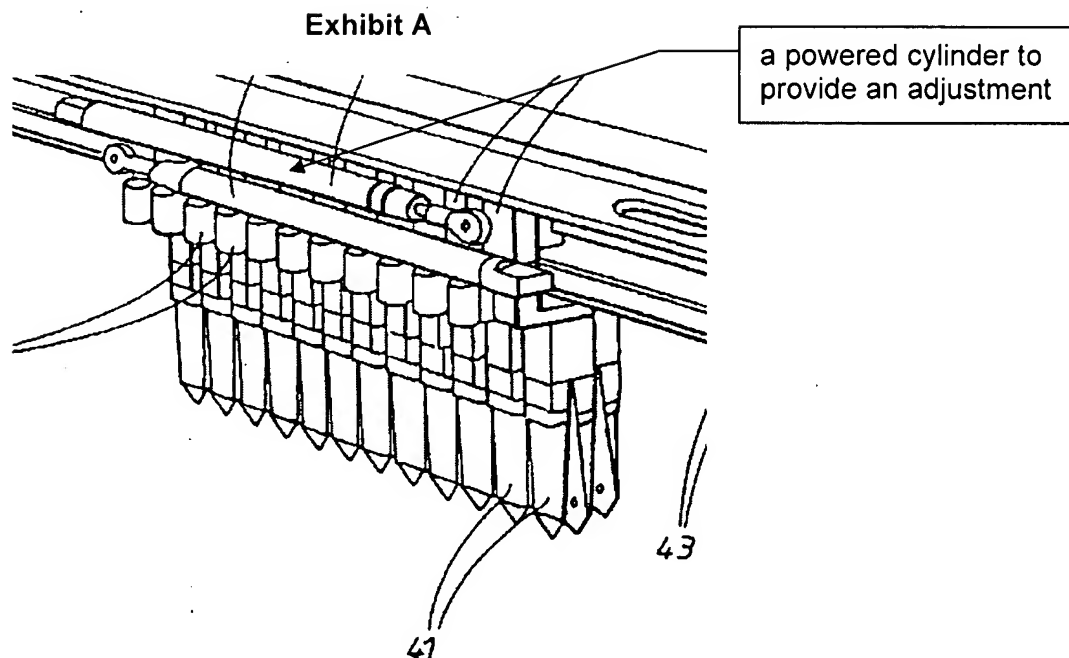
Re claim 5, Linner (6,733,224) does not clearly teach that the pneumatic cylinders engage the scissor action arms at about  $\frac{1}{4}$  of a length thereof. However, it would have been obvious to those skilled in the art to optimize the spacing between the grippers and the application of the cylinders to provide an adjustment to a user. Note that the cylinders (45,46) of Linner (6,733,224) would provide a synchronized motion.

***Response to Arguments***

4. Applicant's arguments filed August 24, 2007, have been fully considered but they are not persuasive.

**Linner (6,733,224) in view of Kress (6,439,631)**

Applicant argues that "Making a device adjustable is only obvious when prior art acknowledges a recognized need for effecting adjustment. Absent motivation for a need to adjustment, making adjustable is not necessarily obvious" (last paragraph of page 4). Claim 5 recites, "the pneumatic cylinders engage the scissor action arms at about  $\frac{1}{4}$  of a length thereof". Linner (6,733,224) teaches a plurality of tube grippers (41) disposed thereon in at least one gripper row, wherein an adjusting device (fig. 4) is disposed on the carrier, and the drive device being formed by two pneumatic cylinders (45,46) which are oriented parallel to each other in the longitudinal direction of the gripper row and which act in opposite directions. Exhibit A (see next page) shows a cylinder (45) being attached to a movable gripper at approximately  $\frac{1}{4}$  of a length.



Kress (6,439,631) teaches a pantograph (44) or a scissor mechanism, adjustably controlled by an electronic device providing a desired spacing and the pantograph is powered by a motor (46) (see col. 7, lines 50-65). It is pointed out that it would have been obvious to those skilled in the art to attach the cylinder (45) of Linner (6,733,224) to the pantograph of Kress (6,439,631) at the distance about  $\frac{1}{4}$  of the length of the pantograph to provide a desired adjustable spacing.

### **Conclusion**

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

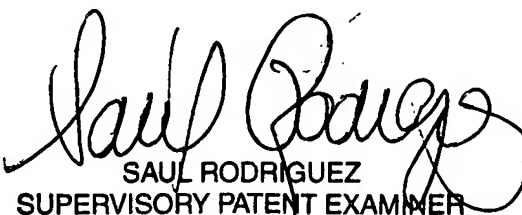
Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (571) 272-6922. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on (571) 272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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SAUL RODRIGUEZ  
SUPERVISORY PATENT EXAMINER